

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* WHITLEY/VANDENBERGHE, Minors.

UNPUBLISHED

July 23, 2019

No. 347443

St. Clair Circuit Court

Family Division

LC No. 17-000411-NA

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Before: TUKEL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the orders terminating her parental rights to her children, NBW, BNW, and JCV, under MCL 712A.19b(3)(c)(ii) (more than 182 days passed since original disposition, other conditions exist for jurisdiction, and parent is unable to rectify conditions), (g) (parent, although financially able to do so, failed to provide proper care and custody, and no reasonable expectation parent will be able to provide proper care and custody within a reasonable time), and (j) (reasonable likelihood child will be harmed if returned to parent).<sup>1</sup> We affirm.

**I. FACTS**

NBW, BNW, and JCV were removed from respondent mother’s care on November 9, 2017, because the family was being evicted on November 10, 2017, and respondent mother had not yet secured appropriate housing. Although respondent mother quickly obtained suitable housing, the children were not returned to her care because of other issues that were discovered during the course of this case, including respondent mother’s lack of parenting ability and

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<sup>1</sup> We note that NBW was born May 7, 2001, and at the time of this appeal has reached 18 years of age. Accordingly, any challenge to the termination of respondent mother’s parental rights to NBW is now moot. *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016) (A matter is moot if this Court’s ruling cannot for any reason have a practical legal effect on the existing controversy”) (quotation marks and citation omitted). We therefore decline to address respondent mother’s arguments on appeal as they relate to NBW.

aggression issues. Respondent mother completed both online and in person parenting classes, but failed to demonstrate to the foster care worker, Tim Aiello, that she benefited from either course. Respondent mother had visitations with BNW and JCV, but not with NBW, because neither respondent mother nor NBW was interested in maintaining a relationship. While under the court's jurisdiction, NBW was placed in the home of his maternal aunt and uncle, BNW was placed in a foster home, and JCV was placed with his father, who was not a respondent in this case.<sup>2</sup>

Petitioner filed a petition for termination for respondent mother's parental rights primarily because of an incident that occurred during unsupervised visitation between respondent mother, BNW, and JCV. On this occasion, respondent mother became upset with the children, and "began yelling and screaming," as well as "slamming doors and swearing." BNW told Aiello that respondent mother became upset because BNW was talking to her girlfriend on the telephone during the visit. Respondent mother's behavior scared JCV. Respondent mother asked JCV to come to her bedroom, but JCV refused. Respondent mother then "picked up [JCV] and forced him into her room."

After a few minutes, JCV exited respondent mother's bedroom, and he and BNW went into BNW's bedroom. Respondent mother later came into BNW's room, and resumed yelling. Respondent mother threatened that she would have her parental rights terminated so BNW would be alone. Respondent mother also threatened to "kill herself by jumping off the Blue Water Bridge" after dropping the children off at home. Respondent mother left the room, and the children comforted each other.

Respondent mother later returned to BNW's room to request that JCV come with her. JCV refused. Once again, respondent mother picked JCV up, and carried him to her bedroom. JCV left respondent mother's room, and returned to BNW almost immediately. Respondent mother "then came into [BNW's] room and yelled that she will not have any closed doors in her house." Respondent mother and BNW argued and, at one point, respondent mother raised her hand as if preparing to hit BNW. BNW and JCV "pinky promised" not to report respondent mother's behavior to petitioner "out of fear that visitation would be cancelled and they would not see each other for a while." Petitioner nonetheless learned of this incident, and changed respondent mother's visitation to supervised visitation occurring one hour each week.

## II. STATUTORY GROUNDS

Respondent mother first argues that petitioner failed to establish that statutory grounds for termination found in MCL 712A.19b(3)(c)(ii), (g), and (j) existed by clear and convincing evidence. We disagree.

This Court reviews the lower court's findings for clear error. MCR 3.977(K). "The clear error standard controls our review of both the court's decision that a ground for termination has

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<sup>2</sup> The father of NBW and BNW was a respondent in this case, and ultimately released his parental rights.

been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (quotation marks and citation omitted). A finding is clearly erroneous if, " 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.' " *Id.* (citation omitted). Clear error review requires a lower court's decision to strike this Court "as more than just maybe or probably wrong." *Id.* Regard also must "be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). The lower court needs "clear and convincing evidence of only one statutory ground to support its termination order," and it is harmless error if the court erroneously terminates under an additional statutory ground. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The trial court determined that petitioner established the statutory grounds for termination found in MCL 712A.19b(3)(c)(ii), (g), and (j) by clear and convincing evidence. "In order to comply with the guarantees of substantive due process, the state must prove parental unfitness by 'at least clear and convincing evidence' before terminating a respondent's parental rights." *In re B & J*, 279 Mich App 12, 23; 756 NW2d 234 (2008) (citation omitted). "[T]he liberty interest of the parent no longer includes the right to custody and control of the children" after the court determines that at least one statutory ground for termination was established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded in part by statute.

MCL 712A.19b(3)(c)(ii) provides that a court shall terminate parental rights if:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

\* \* \*

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent mother does not appear to dispute that more than 182 days elapsed between the initial disposition order and the termination of her parental rights. Instead, she argues that she rectified the conditions leading to the children's removal from her care, namely, issues with suitable housing and operational utilities. However, respondent mother's argument ignores the fact that MCL 712A.19b(3)(c)(ii) provides for termination when "[o]ther conditions exist that cause the child to come within the court's jurisdiction," meaning (c)(ii) allows a court to terminate a parent's rights when conditions other than those alleged in the initial petition become apparent during the course of the case. In this case, the court found that the evidence supporting

termination pursuant to MCL 712A.19b(3)(c)(ii) included respondent mother's failure to benefit from parenting classes and counseling, her inconsistent income, and the incident that occurred during unsupervised visitation.

The court's findings are supported by the evidence. Respondent mother admitted that she did not benefit from parenting classes. Numerous people, including JCV's father and BNW, testified that respondent mother continued to have anger and aggression issues well into the course of this case. For example, BNW testified that during unsupervised visitations, respondent mother "showed her true colors and the littlest thing would set her off." BNW also testified about the incident that occurred during an unsupervised visitation where respondent mother yelled and swore at BNW in front of JCV, picked JCV up and forced him into respondent mother's bedroom multiple times, threw a fan at BNW, and appeared, at one point, to prepare to hit BNW. Finally, Aiello testified that respondent mother frequently changed jobs, and was behind in her utility bills at one time during the course of the case. Thus, the court did not clearly err when it determined that petitioner established the statutory ground for termination found in MCL 712A.19b(3)(c)(ii) by clear and convincing evidence.

The trial court need only find clear and convincing evidence of one statutory ground in MCL 712A.19b(3) to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Thus, termination of respondent mother's parental rights was appropriate. *Id.* However, the other statutory grounds raised by respondent mother on appeal will be discussed herein.

MCL 712A.19b(3)(g) and (j) provide that a court shall terminate parental rights if

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Harm includes physical as well as emotional harm or abuse. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). The trial court found that the evidence supporting termination pursuant to these statutory grounds included respondent mother's inability to properly care for the children because of her aggression and lack of control over her emotions, which put the children at risk of emotional harm. As previously discussed, BNW testified about an incident during an unsupervised visitation in which respondent mother behaved aggressively. BNW testified that JCV was scared during this incident. BNW also said that she did not "feel safe" in respondent mother's care. BNW was afraid for JCV to be alone with respondent mother, in part, because respondent mother threw JCV into a bouncy seat when he was a baby. Similarly, JCV's father feared that JCV was at risk of emotional harm if he was in respondent mother's care. Likewise, NBW testified that respondent mother often lost her temper, and that

he and his siblings had to “walk[] on egg shells” around her. Therefore, the court did not clearly err when it determined that petitioner established the statutory grounds for termination found in MCL 712A.19b(3)(g) and (j) by clear and convincing evidence.

### III. BEST INTERESTS

Next, defendant argues that termination of her parental rights was not in the best interests of BNW and JCV because she could still bond with the children, and provide them with an appropriate home. We disagree.

The lower court must determine whether termination of parental rights is in a child’s best interests using the preponderance of the evidence standard. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). As previously stated, this Court reviews the lower court’s findings for clear error, MCR 3.977(K), and the clear error standard of review provided above also applies to the best interests analysis, *In re Williams*, 286 Mich App at 271

MCL 712A.19b(5) states that “[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests,” the court must terminate the parent’s rights. “The trial court should weigh all the evidence available to determine the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The focus must be on the child, rather than the parent. *In re Moss*, 301 Mich App at 87. In making the best interests determination, “the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

BNW testified that she wanted the trial court to terminate respondent mother’s parental rights. This demonstrates that respondent did not have a relationship with the minor children. The court acknowledged that JCV likely had a bond with respondent mother, but found that this bond was not enough to outweigh the other best-interest factors, which weighed in favor of termination.

Respondent mother’s lack of parenting ability was well established by the evidence. Respondent mother was unable to control her aggression when parenting BNW and JCV. JCV’s father testified that he noticed a change in JCV’s behavior around the time that unsupervised visits with respondent mother began. JCV became angrier, and appeared afraid to talk about things with his father and Aiello. JCV also “seemed more reserved and seemed to be acting out more.” It is unlikely that respondent mother could improve her parenting ability as she testified that she did not benefit from the two sets of parenting classes that she completed.

Respondent mother was unable to provide the children with permanency, stability, and finality for the reasons previously discussed. Respondent mother was particularly unable to provide BNW with permanency, stability, and finality because she threatened to terminate her parental rights to BNW on multiple occasions. On one occasion, respondent mother sent BNW a text message saying, “I’m going to terminate my own rights, have fun in foster care [BNW], have fun being alone.” BNW has mental health issues that include self-harm and suicidal ideations that are likely worsened by respondent mother’s behavior toward her.

Finally, all three children were doing well in their respective placements. If respondent mother's rights were terminated, JCV would remain with his father, and BNW with her foster family while awaiting adoption. Therefore, the trial court did not clearly err when it determined that petitioner established by a preponderance of the evidence that termination of respondent mother's parental rights was in the best interest of BNW, and JCV.

Affirmed.

/s/ Jonathan Tukel  
/s/ Kathleen Jansen  
/s/ Michael J. Riordan